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PRIVATE HEARINGS: THEIR ADVANTAGES AND DISADVANTAGES

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Heretofore trials of all offenders, young and old, have been open to the public. Seats have been provided for spectators, and no one has been excluded for any reason except lack of room. The newspapers have been free to report the details of cases, including the names of the parties. At present, in connection with the removal of the cases of offenders under sixteen or seventeen from the operation of the criminal law, there is a tendency to limit the publicity of the court proceedings in such cases. The limitations on publicity now being introduced in juvenile courts vary in strictness all the way from an understanding with the newspapers that the offenders' names shall not be published, to what may be called for convenience a private hearing.

The main feature of a private hearing is the reduction of the number of persons present to the minimum. In the most advanced form of private hearing the presence of a clerk and a court officer is dispensed with, and the only official in attendance is the probation officer in charge of the case which is being heard. Only one or two visitors are admitted at a time. No visitor is admitted without there being some special reason for his presence. Such a special reason exists for the presence of such persons as the following, viz.: Clergymen, teachers, legislators, social workers, officers of societies for social service, and public officials concerned with the enforcement of law and the preservation of order. At the hearing of each case the persons directly interested in that case are admitted. These persons are the parents, their attorney or any other person whom they wish to have talk for them, any person concerned about the child on account of race or religion, any person interested in the child on account of the child's or the family's connection with any such organization as a social settlement or the associated charities. If there is a trial only one witness is admitted at a time.

Some of the advantages of the private hearing are brought out

by considering what is the essential purpose of a hearing in a juvenile court. The purpose of a hearing in a juvenile court is to find out whether the child is delinquent or not, and, if he is delinquent, to find out the cause of the delinquency and a remedy for it. The most efficacious way of finding out whether a child has done wrong in any instance, and what is the cause of the wrongdoing, is shown by the action of sensible parents. The father talks with the boy alone in his study, or the mother with the girl in her chamber. The teacher similarly takes the offending pupil to his private room. The nearer conditions of the hearing in the juvenile court approach the father's study and the teacher's private room, the more fully and promptly the judge will ascertain the facts and causes of the delinquency of the child. The private hearing readily adapts itself to affording conditions exactly like those of the father's study or teacher's private room. Where the number to be present at hearings is strictly limited they can be held in a small room, and the judge and child can readily be left entirely alone in it. The child must not be talked with apart from the parents against their objection, but in most cases there is no objection and the judge can proceed from the outset after the fashion of the wise parent, and begin his investigation by talking with the child alone; though girls, of course, should never be talked with wholly alone, and, if possible, a woman should be the attendant.

The foregoing considerations show that one advantage of the private hearing is that it affords much more favorable conditions than a public hearing for finding out the facts and causes of the child's delinquency. It is well to remember in this connection that "delinquent" laws usually expressly declare that the treatment of children under them shall be as nearly as possible like that which children should receive from their parents.

Still another advantage of the private hearing is brought out by considering the other important part of the purpose of juvenile court hearings; namely, finding and prescribing the remedy for the delinquency. The best way of accomplishing this part of the purpose, and also, indeed, to some extent of finding out the causes, is indicated by the procedure of the physician. The physician talks with the parents apart from the child as to both causes and remedy, and it is desirable to have facilities for excluding the child from the room where they are talking. Furthermore, the physician finds it

desirable to talk with the parents without the presence of third persons, for parents are to some extent like the children in opening up their hearts more freely the more nearly they are to being alone with their adviser. The private hearing with the small room enables the judge to confer with the parents like a physician in his office, and thus the further advantage of the private hearing is that it affords more favorable conditions than a public hearing for determining the remedy for the delinquency.

Still further advantages of the private hearing are the following, viz.:

A bold child cannot pose as a hero in a small room with only half a dozen people and no other children present.

Children are easily precluded from hearing, or even seeing, their parents admonished. It is frequently necessary to admonish parents. To admonish them in the presence of their child, even if the child is so far away that he cannot hear, tends to further impair their already too weak authority.

Children do not hear each other's cases.

Children are not pilloried before the public.

Curiosity seekers are barred.

The judge can wholly overlook or deal informally with certain natural outbursts on the part of children, parents and others, which in a public hearing might have to be met with a formal reprimand. Such a reprimand hinders seriously reaching a satisfactory understanding between the judge and the child or its parents or friends, while a quiet expostulation and explanation with the malcontent alone in a private hearing-room, which is easily cleared for the purpose, may greatly facilitate the reaching of such an understanding.

The feelings of parents can be more effectively spared. There are frequently blameless parents who are greatly distressed by their children's delinquency, or by an order for their children to be sent to a reform school. Any one who has seen the tears of strong fathers and the prostration of sensitive mothers in such cases will appreciate this advantage of the private hearing in protecting them from the presence of strangers at such times.

To sum up in one sentence the advantages of the private hearing, it may be said that the function of the judge of a juvenile court is much like that of a physician, and the private hearing affords for the judge the closest approach to the conditions under which the physician works.

The greatest objection to the private hearing lies in its being a radical departure from the hard-won and long-established principle of full publicity in court proceedings. This is a real and serious objection. A just estimate of the weight that should be given to it and a sound decision as to what extent we should forego privacy on account of it can only be arrived at by experience. It is not wholly avoided by the fact that the constitutional guaranty of a public trial applies only to criminal cases, while the proceedings in a juvenile court are not criminal proceedings. The hearing in the juvenile court may result in the confinement of a child in a reform school and the suspension or the termination of the parental relation. That is a much more serious result in some respects than the ordinary sentence of fine or imprisonment in a criminal case. While it is true that the reform school is not a prison and the child is not sent there for punishment, but to be benefited and improved by physical care, industrial training and wholesome amusement, he is, nevertheless, deprived of his liberty and the parents are deprived of their natural authority. The analogies of the teacher and the physician fall short at this very point. Their proceedings can never have any such result as commitment of the child or supersession of the parents' authority.

Under the system of private hearings there is greater likelihood than at public hearings of harm resulting from the carelessness, eccentricities or prejudices of an unfit judge. To be sure, no one contemplates that by the establishment of private hearings all persons shall be excluded, or that children shall be talked with alone against the objections of their parents, or ordered to be committed without their parents being heard, or without hearing the other interested persons mentioned above in the description of the private hearing. Moreover, it can easily be provided by law that visitors of such classes as those previously mentioned *shall* be admitted, with proper limitations as to the number to be admitted at a time. But the persons who desire admission cannot come in as a matter of course. They must show their qualifications, and that helps an unfit judge to maintain a questionable seclusion. The conditions attending a private hearing make it easy for a judge to ignore the parents, if so disposed, and interview the child without regard to them. All this might result in findings of delinquency on insufficient evidence, in unreasonable commitments, or even improper talk with the child.

In closing, it should be said that the full extent of the advantages of private hearings cannot be appreciated without actual experience in conducting cases with the benefit of them, and, further, that the disadvantages of departing from the principle of full publicity are likely to be found, as time goes on, to have been overestimated.

Until the private hearing has been fully tested by experience, communities where the citizens are doubtful can proceed with caution, taking preliminary steps by suppressing newspaper reports of the names of the children and excluding all minors from the hearing except the offender and juvenile witnesses one at a time.

By such limitations and by keeping the spectators at a distance from the judge's desk many of the advantages of private hearings may be obtained in some degree, as, for example, the freedom of the judge in talking to the children but not their freedom in talking to him, the prevention of their posing as heroes and the prevention of their hearing the cases of other children. It is to be hoped that all jurisdictions will go that far at an early day, and then not forget that they still lack the following benefits, viz.: the most natural and efficacious method of getting at the facts of the delinquency and the causes of it, and determining the treatment for it; the protection of children and blameless parents from being pilloried before the public; and, in general, an elasticity, facility and adaptability of procedure which no judge, even the most conservative, would be likely to relinquish without serious regrets after he had once enjoyed it.